

### **REMARKS**

Applicant respectfully requests Examiner Agers to reconsider and withdraw the rejection under 35 U.S.C. § 112, second paragraph, in view of the new claims 34-43 which have been drafted to overcome this rejection by deleting the term “and/or” (which term, Applicant respectfully, submits is, in fact, quite definite).

Applicant respectfully requests the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 102(b) based on anticipation by Erlich ‘769, in so far as this rejection may be applied to the new claims 34-43.

Such a rejection requires that Erlich disclose, either expressly or inherently, each limitation of each of the claims 34-43, or in other words, that each of claims 34-43 be **readable** on Erlich’s disclosure. Applicant respectfully submits that clearly such is not the case here; furthermore, Applicant also respectfully submits that the subject matter of each of claims 34-43 would not have been obvious from Erlich because Erlich does not disclose or even suggest all of the limitations of each of the claims 34-43.

The three new independent claims 34, 35 and 43 are directed to the pack illustrated in Figs. 1, 8 and 11. The dependent claims 36 -41 correspond in content to the original claims 5-10 and to the previously presented claims 21-26. Dependent claim 42 is new.

### **DISCUSSION**

The claimed invention is directed to a modified cigarette of the hinge-lid type. This type of pack is the leading cigarette pack worldwide. The characterizing constructive feature of this pack is the overall cuboid shape with wide front and rear walls and narrow upright side walls. In this geometric construction the lid is connected to the box part in the region of a (wide) rear side, namely with a lid rear wall being connected to a box rear wall by means of a transverse linear

articulation. Located in the pack as configured in this manner is a collar (inner frame), which is anchored in the box part and which projects from the latter.

The changes in design provided by the present invention relate exclusively to a pack of this type. All embodiments of the modification pursuant to the invention relate to the design of the lid and/or the base region of the box part. These regions are configured such that a cavity is created above and/or beneath the cuboid-shaped pack contents (cigarette block), which is designated in the drawings as chamber 50, 51.

The pack pursuant to claim 34 and claim 35 (corresponding to Fig. 1 to Fig. 7, on one hand, and Fig. 8 to Fig. 10, on the other hand) are configured such that the specially designed region for creating the chamber 50, 51 has a symmetrical configuration in relation to an (imaginary) transverse central longitudinal plane. In the first exemplary embodiment mentioned (Fig. 1...) the chamber 50, 51 is bounded by a predominately arcuate end wall 21, while the second exemplary embodiment (Fig. 8) has exclusively planar sections of the end wall 21 and in particular has a trapezoid-shaped configuration.

Claim 43 relates to the embodiment pursuant to Fig. 11 to Fig. 13 with an oblique end wall and a correspondingly configured chamber 50.

Cited against the previously presented claims was only US 4 015 769 to Erlich. Erlich relates to a cigarette pack that represents a modified hinge-lid box. This is a kind of pack which is generally referred to in professional circles as a "lighter pack" or as a "side lid pack". With the pack having an overall outer contour which is cuboid in shape, the lid in all exemplary embodiments is connected to the box part in the region of a narrow, upright side wall. In practice, this type of pack is employed only in individual cases in connection with cigarette marketing efforts.

In the Erlich pack, a chamber is formed above and beneath the pack contents (not shown), specifically in the region of the lid, on one hand, and in addition, in the case of some embodiments, in the region of the base. In all embodiments the actual interior space of the pack is delimited by a transverse wall 40, 46 (Fig. 3) with respect to the upper or lower chamber. The separating wall 40 (disposed in the lid region) can be configured as a separate blank (Fig. 1, Fig. 10) or as a component of the overall blank (Fig. 9).

As pointed out above, the subject matter, taken as a whole, of each of claims 34-43 is not taught or even suggested by Erlich. Furthermore, Erlich does not teach, or even suggest, all of the limitations of any of the claims 34-43. Of special importance of Applicant's claimed invention is that the end wall 21 of the lid (and the corresponding base wall) is configured in a special manner (as claimed) by the corresponding side sections 25, a configuration which clearly is neither taught nor even remotely suggested by the Erlich.

In summary, then, Applicant respectfully requests Examiner Agers to reconsider and withdraw the rejections under 35 U.S.C. § 112, second paragraph and 35 U.S.C. § 102(b), and to find the application to be in condition for allowance with all claims 34-43; however, of for any reason feels that the application is not now in condition for allowance, she is respectfully requested to **call the undersigned attorney to discuss any unresolved issues and to expedite the disposition of the application.**

Applicant submits here with a multiple dependent claim fee to cover the surcharge for the multiple dependent claims now pending.

Applicant also files concurrently herewith a Petition (with fee) for Extension of Time of two months.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any additional fees under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

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/John H. Mion/

John H. Mion

Registration No. 18,879

